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ATTORNEY FOR APPELLANT:

**GARY L. GRINER**  
Mishawaka, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**ARTHUR THADDEUS PERRY**  
Special Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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ERNESTO SANCHEZ,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 20A04-0704-CR-202

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APPEAL FROM THE ELKHART CIRCUIT COURT  
The Honorable Terry Shewmaker, Judge  
Cause No. 20C01-0301-MR-9

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November 13, 2007

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Ernesto Sanchez appeals the sentence imposed following his guilty plea to felony murder. We affirm.

## **Issues**

Sanchez raises one issue, which we divide and restate as follows:

- I. Whether the trial court abused its discretion in failing to assign significant mitigating weight to his lack of criminal history and guilty plea; and
- II. Whether his sentence is inappropriate in light of the nature of the offense and his character.

## **Facts and Procedural History**

On January 8, 2003, Sanchez and Ricardo Sanchez went to the home of Robert Earl Smith to collect a debt. Appellant's App. at 17. Sanchez had given Smith one and three-quarter pounds of methamphetamine, and Smith owed him \$6000. *Id.* at 88. The three got into an argument, and Sanchez pulled out his gun. *Id.* at 18. Sanchez shot a hole in the living room floor to show Smith that he was serious. *Id.* at 89. Smith pulled out his gun. Sanchez shot Smith five to six times. *Id.* Sanchez then grabbed Ricardo's gun and shot Smith two more times. *Id.* Sanchez and Ricardo fled to New York, throwing their guns out the car window somewhere along the way.

On January 16, 2003, the State charged Sanchez with felony murder.<sup>1</sup> On April 3, 2003, Sanchez pled guilty as charged without a plea agreement. On May 1, 2003, the trial court held a sentencing hearing. The trial court's written sentencing order provides,

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<sup>1</sup> Ind. Code § 35-42-1-1.

After reviewing the record the Court notes mitigating circumstances to be the fact that [Sanchez] has accepted responsibility for his criminal conduct; that he is 30 years of age; and that he has a lack of criminal history. Court finds aggravating circumstances to be the fact that [Sanchez] is an illegal alien in this country not having complied with the laws of the United States of America and the State of Indiana with respect to immigration and naturalization. The Court finds this to be an aggravating circumstance by virtue of the fact that it exhibits a contempt for laws and unwillingness to abide by the laws of this state. Court further notes as an aggravating circumstance the fact that [Sanchez] used two (2) separate handguns to shoot the victim in this matter and left two (2) children without a father by virtue of the murder that he committed. The Court notes from the evidence submitted that the death of Mr. Smith, the victim in this matter, has had a particularized impact on the victim's family by virtue of two (2) children being left fatherless and without support; the family members cannot sleep and have become emotionally upset. In this regard the Court finds this to be particularly an aggravating factor. The Court further finds as an aggravating factor that [Sanchez] stated that he was attempting to procure payment for a truck from the victim at the time of the shooting and in another statement made by [Sanchez] under oath he admitted he was attempting to collect a drug debt of approximately \$6000.00 pertaining to the sale of 1  $\frac{3}{4}$  pounds of methamphetamine which is an extremely large quantity of controlled substance.<sup>[2]</sup> The Court finds this to be an aggravating circumstance by virtue of [Sanchez] adopting two (2) separate versions of the motive for the offense and further by virtue of the inter-relation between drug dealing and this murder. The Court further finds this as an aggravating circumstance since it evidences the commission of other crimes by [Sanchez] herein bearing on his character in light of the fact that he also committed a burglary offense in the State of Michigan while on the run from law enforcement authorities. Court further finds as an aggravating circumstance the fact that [Sanchez] disposed of evidence in this case with the intent to mislead police by throwing both handguns used by him out the window of a motor vehicle on his way to New York while fleeing the jurisdiction. The Court weighs the aggravating and the mitigating circumstances and sentences [Sanchez] to fifty-five (55) years at the Department of Corrections together with an additional five (5) years by virtue of the aggravating circumstances deemed by the Court to outweigh the mitigating circumstances for a total sentence of sixty (60) years.

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<sup>2</sup> Sanchez told the pre-sentence investigator that he was attempting to collect a debt for a vehicle he sold to Smith. Appellant's App. at 50. However, in the statement that he provided to police, he explained that he went to Smith's home to collect a drug debt. *Id.* at 89.

*Id.* at 1-2. This belated appeal ensued.

## **Discussion and Decision**

### ***I. Mitigating Factors***

Sanchez complains that the trial court did not assign sufficient mitigating weight to his lack of criminal history and guilty plea. We review a trial court's sentencing decision for an abuse of discretion, including the trial court's decision to increase or decrease the presumptive sentence because of aggravating or mitigating factors. *Henderson v. State*, 769 N.E.2d 172, 179 (Ind. 2002).<sup>3</sup> A trial court must consider all evidence of mitigating factors presented by the defendant, but it is not obligated to agree with the defendant on the weight or value given to each mitigating factor. *Bunch v. State*, 697 N.E.2d 1255, 1258 (Ind. 1998).

As to Sanchez's lack of criminal history, we note that even though Sanchez does not have a history of criminal convictions, there are other indications that Sanchez has not led a law-abiding life: he is an illegal alien; he committed a burglary while he was evading capture for this crime;<sup>4</sup> he attempted to dispose of evidence by throwing the guns out the car window while driving to New York; he committed the offense while attempting to collect on a drug debt; and he provided conflicting statements as to the purpose of his visit to Smith's house. A trial court is not obligated to give a defendant's lack of criminal history significant

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<sup>3</sup> Sanchez committed the current offense and was sentenced before *Blakely v. Washington*, 542 U.S. 296 (2004) and Indiana's April 25, 2005 sentencing amendments. We therefore apply the pre-*Blakely* sentencing statutes and standard of appellate review. We observe, however, that under the current sentencing system, "[t]he relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse." *Anglemyer v. State*, 868 N.E.2d 482, 493 (Ind. 2007).

<sup>4</sup> Sanchez also takes issue with the trial court's consideration of his alleged burglary in Michigan. He states that there was no conviction or even the filing of a formal charge. However, Sanchez admitted in his voluntary statement to police that he was in jail in Michigan "because I got caught breaking into a house up here." Appellant's App. at 88.

mitigating weight where the defendant has a history of behavior demonstrating a disregard for the law. *Bostick v. State*, 804 N.E.2d 218, 225 (Ind. Ct. App. 2004). Accordingly, we cannot say that the trial court abused its discretion in failing to give Sanchez's lack of criminal history more weight than it did.

Sanchez asserts that his guilty plea deserves significant mitigating weight because he pled guilty promptly and without the benefit of a plea agreement. He contends that this circumstance is significant because jury trials are expensive and uncertain and the victim's family was spared months and years of suffering. A guilty plea is a significant mitigating factor in some circumstances. *Widener v. State*, 659 N.E.2d 529, 534 (Ind. 1995). However, a trial court does not abuse its discretion in failing to give a guilty plea significant mitigating weight where a defendant's change of testimony undermines his acceptance of responsibility for the crime. *Ruiz v. State*, 818 N.E.2d 927, 929 (Ind. 2004). Here, Sanchez's acceptance of responsibility was tarnished by his contradictory explanations as to why he wanted money from Smith. Therefore, the trial court did not abuse its discretion in failing to confer more mitigating weight to Sanchez's guilty plea than it did.

## ***II. Appropriateness of Sentence***

Sanchez claims that his sixty-year sentence is inappropriate in light of the nature of the offense and his character.<sup>5</sup> Article VII, Section 6 of the Indiana Constitution authorizes this Court to independently review and revise a sentence imposed by the trial court. *Childress v. State*, 848 N.E.2d 1073, 1079 (Ind. 2006). This appellate authority is

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<sup>5</sup> At the time he committed this offense, the presumptive sentence for felony murder was fifty-five years, with a maximum of ten years added for aggravating circumstances. Ind. Code § 35-50-2-3.

implemented through Indiana Appellate Rule 7(B), which provides, “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.”

With regard to the nature of the offense, Sanchez urges us not to consider that he used two guns to shoot the victim because there is no evidence in the record suggesting that his use of two weapons made the crime more painful or heinous. We disagree. Sanchez shot Smith five or six times and knew that he had hit Smith because he was “standing so close.” Appellant’s App. at 89. He then chose to grab Ricardo’s gun and shoot Smith two additional times. Thus, the victim had already received multiple gunshot wounds at close range, but Sanchez committed additional acts of gratuitous violence. The viciousness of the offender’s conduct is a particularized circumstance that may support a sentence enhancement. *Benton v. State*, 691 N.E.2d 459, 465 (Ind. Ct App. 1998).

We further observe that Sanchez’s crime caused two children to lose their father. As the trial court noted, “the family members cannot sleep and have become emotionally upset.” Appellant’s App. at 1. While the immediate effects of the pain and shock of losing their father are devastating, the harm is far-reaching. The children will continue to suffer from their father’s absence their entire lives. Further, the crime was committed against a backdrop of drug dealing. Accordingly, the nature of the crime supports the imposition of an enhanced sentence.

As for his character, Sanchez insists that we should not consider that he provided

conflicting statements regarding his purpose in visiting Smith. We think that Sanchez's contradictory stories provide insight into his character. He provided false information, most likely in order to obtain a lighter sentence. This reflects poorly on his character.

Finally, while his lack of criminal history and his promptness in pleading guilty without a plea agreement reflect favorably on his character, these considerations are undercut by the fact that he is an illegal alien, was involved in dealing methamphetamine, committed burglary, provided conflicting stories regarding the motive for the murder, and attempted to destroy evidence, all of which demonstrate a lack of respect for the law. We note that Sanchez was not given the maximum sentence. In sum, we cannot say that the sixty-year sentence imposed by the trial court is inappropriate in light of the nature of the offense and Sanchez's character.

Affirmed.

DARDEN, J., and MAY, J., concur.